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Date: July 11, 2005

To:	G. Hopkins Guy III, Esq. Eric Wesenberg, Esq. Rory Bens, Esq.	Fax:	650 614 7401	☒ Use this fax number only
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FOR COURT USE ONLY

ATTORNEY OR PARTY WITHOUT ATTORNEY *(Name, State Bar number, and address)*:
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TELEPHONE NO.: (650) 493-9300 FAX NO. *(Optional)*: (650) 565-5100
E-MAIL ADDRESS *(Optional)*:
ATTORNEY FOR *(Name)*: Defendants GOOGLE INC. and ORKUT.COM LLC

SUPERIOR COURT OF CALIFORNIA, COUNTY OF
STREET ADDRESS: 191 North First Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Jose, CA 95113
BRANCH NAME:

PLAINTIFF/PETITIONER: Affinity Engines, Inc.
DEFENDANT/RESPONDENT: Google Inc., et al.

CASE MANAGEMENT STATEMENT

CASE NUMBER: 104-CV-20368

(Check one): ☑ **UNLIMITED CASE** (Amount demanded exceeds $25,000) ☐ **LIMITED CASE** (Amount demanded is $25,000 or less)

A CASE MANAGEMENT CONFERENCE is scheduled as follows:

Date: July 26, 2005 Time: 11:00 a.m. Dept.: 2 Div.: Room:

Address of court *(if different from the address above)*:

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties** *(answer one)*:
   a. ☐ This statement is submitted by party *(name)*:
   b. ☑ This statement is submitted **jointly** by parties *(names)*:
   Google Inc. and Orkut.com LLC

2. **Complaint and cross-complaint** *(to be answered by plaintiffs and cross-complainants only)*
   a. The complaint was filed on *(date)*:
   b. ☐ The cross-complaint, if any, was filed on *(date)*:

3. **Service** *(to be answered by plaintiffs and cross-complainants only)*
   a. ☐ All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
   b. ☐ The following parties named in the complaint or cross-complaint
      (1) ☐ have not been served *(specify names and explain why not)*:
      (2) ☐ have been served but have not appeared and have not been dismissed *(specify names)*:
      (3) ☐ have had a default entered against them *(specify names)*:
   c. ☐ The following additional parties may be added *(specify names, nature of involvement in case, and the date by which they may be served)*:

4. **Description of case**
   a. Type of case in ☑ complaint ☐ cross-complaint *(describe, including causes of action)*:
   Misappropriation of trade secrets, breach of fiduciary duty, breach of contract, breach of covenant of good faith/fair dealing, intentional interference with contractual relations, intentional interference with prospectiv economic advantage, fraud and deceit, constructive fraud, common law unfair competition, statutory unfair competition.

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4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

AEI alleges that software used to operate the website Orkut.com contains unspecified trade secrets owned by AEI, and that a Google employee formerly associated with AEI violated an alleged obligation to AEI by allegedly using such trade secrets in the development of Orkut.com. Defendants have thoroughly investigated AEI's allegations and believe them to be without merit. Moreover, Defendant Google, through its first-in-time contractual relationship with the employee, owns and/or is licensed to any trade secrets that AEI claims exist in the software at issue in this case.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**
The party or parties request ☑ a jury trial ☐ a nonjury trial *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**
   a. ☐ The trial has been set for *(date):*
   b. ☑ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain):* See Attachment 6(b).
   c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability):*
   Defendants' counsel will not be available for trial in October or November 2005, due to scheduled trials in other matters.

7. **Estimated length of trial**
The party or parties estimate that the trial will take *(check one):*
   a. ☑ days *(specify number):* 15
   b. ☐ hours (short causes) *(specify):*

8. **Trial representation** *(to be answered for each party)*
The party or parties will be represented at trial ☑ by the attorney or party listed in the caption ☐ by the following:
   a. Attorney:
   b. Firm:
   c. Address:
   d. Telephone number:
   e. Fax number:
   f. E-mail address:
   g. Party represented:
   ☐ Additional representation is described in Attachment 8.

9. **Preference**
   ☐ This case is entitled to preference *(specify code section):*

10. **Alternative Dispute Resolution (ADR)**
   a. Counsel ☑ has ☐ has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.
   b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date):*
   c. ☑ The case has gone to an ADR process *(indicate status):* The parties held an unsuccessful mediation in November 2004.

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10. d. The party or parties are willing to participate in *(check all that apply):*

- (1) ☑ Mediation
- (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
- (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
- (4) ☐ Binding judicial arbitration
- (5) ☐ Binding private arbitration
- (6) ☑ Neutral case evaluation
- (7) ☑ Other *(specify):*
  Defendants are willing to submit to ENE with private briefing.

e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.

f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

g. ☐ This case is exempt from judicial arbitration under rule 1601(b) of the California Rules of Court *(specify exemption):*

11. **Settlement conference**

☑ The party or parties are willing to participate in an early settlement conference *(specify when):*
See Attachment 11.

12. **Insurance**

a. ☐ Insurance carrier, if any, for party filing this statement *(name):*

b. Reservation of rights: ☐ Yes ☑ No

c. ☐ Coverage issues will significantly affect resolution of this case *(explain):*

13. **Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

☐ Bankruptcy ☐ Other *(specify):*

Status:

14. **Related cases, consolidation, and coordination**

a. ☑ There are companion, underlying, or related cases.

(1) Name of case: Google Inc. v. Affinity Engines, Inc.
(2) Name of court: U. S. District Court, Northern District of California
(3) Case number: C 05-0598 JW HRL
(4) Status: filed February 9, 2005

☐ Additional cases are described in Attachment 14a.

b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by *(name party):*

15. **Bifurcation**

☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action *(specify moving party, type of motion, and reasons):*

16. **Other motions**

☑ The party or parties expect to file the following motions before trial *(specify moving party, type of motion, and issues):*
Google intends to file a motion to strike the impermissible claims/allegations in Plaintiff's First Amended Complaint (filed June 28, 2005); a motion for contempt re Plaintiff's failure to comply with the Court's April 26, 2005 Order; motions for summary judgment; various discovery motions.

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17. **Discovery**
   a. ☐ The party or parties have completed all discovery.
   b. ☑ The following discovery will be completed by the date specified *(describe all anticipated discovery)*:

Party	Description	Date
Google Inc. and Orkut.com	written discovery	Fall 2005
	depositions of AEI and AEI's witnesses	Winter 2006
	depositions of third party witnesses	Winter 2006

   c. ☑ The following discovery issues are anticipated *(specify)*:
   See Attachment 17(c).

18. **Economic Litigation**
   a. ☐ This is a limited civil case (i.e., the amount demanded is $25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
   b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed *(if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case)*:

19. **Other issues**
   ☐ The party or parties request that the following additional matters be considered or determined at the case management conference *(specify)*:

20. **Meet and confer**
   a. ☑ The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court *(if not, explain)*:

   b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following *(specify)*:

21. **Case management orders**
   Previous case management orders in this case are *(check one)*: ☐ none ☐ attached as Attachment 21.

22. Total number of pages attached *(if any)*: One (1)

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: July 11, 2005

Colleen Bal ▶ *Colleen Bal*
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

▶
(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

PLAINTIFF/PETITIONER: Affinity Engines, Inc.	CASE NUMBER
DEFENDANT/RESPONDENT: Google Inc., et al	104-CV-20368

CASE MANAGEMENT ATTACHMENT:

Attachment 6(b):

Defendants have been vigorously pursuing discovery regarding claims and defenses at issue in this matter. Plaintiff, however, has refused to provide much of this discovery and has forced Defendants to repeatedly seek the assistance of the Court. Most recently, Defendants successfully moved to strike most of the claims in the Complaint as preempted. On June 28, 2005, Plaintiff filed an Amended Complaint with various brand new allegations – many directly contradicting the allegations in the Original Complaint – which are outside the scope of permissible amendment. Defendants therefore are preparing a motion to strike these new, impermissible allegations. Accordingly, the parties are still in the pleadings stage, and the operative complaint is in dispute. Further, in response to the Court's April 26, 2005 Order that Plaintiff identify much of the substance of its claims, Plaintiff provided supplemented interrogatory responses that flaut the Court's order and purport to undo the identification of trade secrets that the Plaintiff was originally ordered to identify under CCP 2019 (d) at the beginning of the case. Defendants therefore are filing a motion for contempt. In addition, Plaintiff continues to refuse to provide required discovery and to impermissibly redact non-privileged information from its production documents, which will require further discovery motion practice. For these reasons, as well as the fact that the parties still have many more depositions to schedule and to take, and Defendants have motions for summary judgment that they are preparing to file, Defendants do not believe that the case can be ready for trial any earlier than February or March 2006.

Attachment 11:

Defendants are willing to participate in an early settlement conference, but believe that any such conference will be futile unless and until AEI specifically identifies the alleged misappropriated trade secrets, the author/source of such trade secrets, and where/how Defendants have used such alleged trade secrets.

Attachment 17(c):

Defendants anticipate further discovery motion practice re: Plaintiff's failure to produce various documents; Plaintiff's failure to produce in unredacted form various non-privileged documents and information; the failure of Plaintiff's witnesses to cooperate in deposition; Plaintiff's refusal to provide witnesses for deposition.

PROOF OF SERVICE

I, Elvira Minjarez, declare:

I am employed in the City and County of San Francisco, State of California. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, CA 94304.

On this date, I served:

DEFENDANTS' CASE MANAGEMENT STATEMENT

☒ By consigning the document(s) to an express mail service for guaranteed next day delivery to the following person(s):

G. Hopkins Guy, III, Esq.
Eric L. Wesenberg, Esq.
Rory Bens, Esq.
Orrick, Herrington & Sutcliffe LLP
1000 Marsh Road
Menlo Park, CA 94025

Steven R. Manchester, Esq.
Manchester, Williams & Seibert
84 West Santa Clara St., Suite 630
San Jose, CA 95113-1808

☒ By consigning the document(s) to a facsimile operator for transmittal on this date to the following person(s):

G. Hopkins Guy, III, Esq.
Eric L. Wesenberg, Esq.
Rory Bens, Esq.
Orrick, Herrington & Sutcliffe LLP
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I am readily familiar with Wilson Sonsini Goodrich & Rosati's practice for collection and processing of documents for delivery according to instructions indicated above. In the ordinary course of business, documents would be handled accordingly.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Palo Alto, California on July 11, 2005.

Elvira Minjarez